

as in those cases, the Commission should take the steps necessary to ensure continuity of service.⁵⁶

Even if Airadigm could somehow be regarded as a wrongdoer for implementing a business plan that failed, the Commission should not punish innocent members of the public for Airadigm's mistakes. Under Airadigm's plan of reorganization, Airadigm's equity holders will lose their entire investment. Allowing these licenses to cancel would punish only Airadigm's subscribers, its innocent creditors and its 110 employees. It would be absurd to implement a policy that causes critical patients at St. Mary's Hospital to go unattended because they are unable to summon a nurse, on the basis that Airadigm was arguably mistaken in its interpretation of the law.

Likewise, the Commission's policies long have recognized the "equitable considerations in favor of innocent creditors."⁵⁷ The principles that underlie the Commission's *Second Thursday* doctrine apply with equal vigor here: Airadigm's proposed sale out of bankruptcy provides some payment to its creditors, who are already losing tens of millions of dollars. As it is, the plan of reorganization calls for a significant discount on Airadigm's debt. But if Airadigm loses its licenses, its creditors will receive virtually nothing.

The proposed sale described in the Sale Motion will accomplish by private (but court-supervised) means the same result as an FCC default and reauction, while preserving continuity of service in a way that could not be achieved by the FCC. The Commission

⁵⁶ See also *JAJ Cellular v. FCC*, 54 F.3d 834 (D.C. Cir. 1995) (upholding FCC grant of operating authority based on a "single paragraph of explanation," which is summed up in the proposition "that 'service to the public will cease unless we take further action'").

⁵⁷ *MobileMedia Corporation, Application for Authorizations and Licenses*, 14 FCC Rcd 8017, ¶ 4 (1999) (quoting *Second Thursday Corp.*, 22 FCC 2d 515, 516).

contemplated this situation in its 1996 *Competitive Bidding Report and Order*.⁵⁸ The Commission decided to allow entrepreneur's block operators to sell their licenses in order to promote uninterrupted service:

market-oriented solutions in the event of financial distress will help avoid PCS license defaults to the Commission and accompanying investor and/or service disruption that such defaults engender. *Market-oriented solutions to problems of financial distress will often be preferable to the FCC reclaiming and reauctioning licenses, and we believe this amendment will promote such a result by allowing transfers to entrepreneurs who may be better prepared than the original licensee to construct and provide service.*⁵⁹

Here, having tried and failed to make a sustainable business with the licenses, Airadigm's sale out of bankruptcy would transfer the licenses to an entrepreneur who would proceed to construct and provide service.⁶⁰ Airadigm's proposal preserves the public interest in continuity of service by effecting the exact sort of market-oriented solution contemplated by the Commission when it first promulgated its C Block rules.

To allow these licenses to cancel would violate the Commission's statutory duty to promote service, particularly to rural areas. Section 309(j) of the Communications Act directs the Commission to promote specific public interest objectives through the implementation of its competitive bidding procedures.⁶¹ The first of these Congressionally-mandated objectives is "the development and rapid deployment of new technologies, products and services for the benefit of

⁵⁸ *Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, 11 FCC Rcd 7824 (1996).

⁵⁹ *Id.* at 7864 (emphasis added).

⁶⁰ The fact that this sale is contingent upon bankruptcy court approval makes the end result essentially auction-like: the court ensure that the spectrum assets are sold to the highest and best bidder.

⁶¹ 47 U.S.C. § 309(j)(3).

the public, *including those residing in rural areas.*⁶² Courts have recognized the “particular congressional concern for rural consumers” evidenced by this section.⁶³ It would be plainly harmful to thousands of existing consumers in rural Wisconsin, and would thus violate the Commission’s mandate, to allow Airadigm’s licenses to cancel. As the Commission has stated: “In assessing the public interest, we must try to ensure that *all* the objectives of Section 309(j) are considered.”⁶⁴

B. No public interest would be served by canceling the licenses

The receipt of money, *per se*, is not a legitimate regulatory objective for the Commission. The Communications Act directs that, among other goals, the Commission recover for the public “a portion” of the value of the spectrum it auctions off.⁶⁵ But the Act *prohibits* the Commission from basing its regulations “solely or predominantly on the expectation of Federal revenues.”⁶⁶ Rather, the Commission may only use the payment of money as a proxy for, or an indication of, legitimate regulatory objectives.⁶⁷

The Commission’s precedent identifies two concerns that underlie its strict enforcement of payment deadlines. One is to preserve the integrity of the auction process. The general notion is that lenient enforcement could allow insincere bidders to run up the price in order to win an auction—while having little hope of actually being able to obtain financing or

⁶² 47 U.S.C. § 309(j)(3)(A) (emphasis added).

⁶³ *Melcher v. FCC*, 134 F.3d 1143, 1153 (1998).

⁶⁴ Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, ¶ 158 (Rel. Nov. 3, 1997) (emphasis added).

⁶⁵ 47 U.S.C. § 309(j)(3)(C).

⁶⁶ 47 U.S.C. § 309(j)(7)(B).

⁶⁷ See also, e.g., *In re. Nextwave*, 1999 WL 1267039 at *7-8 (purpose of auction not to “maximize revenue,” but to award licenses efficiently).

run an economical system—secure in the knowledge that if and when the bid price proved to be too much, its payment obligations would be forgiven.⁶⁸ The second is to serve as a proxy for the financial qualification of the winning bidder to construct and operate a wireless network.⁶⁹

Neither concern is applicable here.

To the extent that payments are required in order to show financial viability, that concern is inapplicable. Airadigm has already built out its system to cover roughly a third of its licensed population, the five-year build-out requirement,⁷⁰ so its ability to construct a network should not be at issue. Furthermore, Airadigm's financial ability to operate a network should not be at issue. As an initial matter, Airadigm's reorganization depends on the bankruptcy court's approval of the financial viability of the resulting business. And as stated, Airadigm intends—subject to Commission and bankruptcy court approval—to enter into a transaction that will transfer its assets, including these licenses, to another designated entity. If the Commission has concerns about the financial viability of the acquiring entity, it could address those concerns in the context of a transfer application.

The Commission has emphasized the importance of *down payments* as a proxy for financial viability, as opposed to the *installment payments* at issue here: A down payment “is the last payment that is required before the Commission grants the license and proceeds with installment payments under a note and a security agreement. It is important that financial viability be clearly demonstrated before we grant the license.”⁷¹ For the same reason, the

⁶⁸ See, e.g., *Mountain Solutions* at ¶14.

⁶⁹ See, e.g., *Mountain Solutions* at ¶17.

⁷⁰ This statement is not meant to be a representation that Airadigm has met the five-year build-out requirement: The exact numbers cannot be verified at this time. Rather, this is only to say that Airadigm's build-out is somewhere in that range.

⁷¹ *Id.* at ¶ 18. See also, e.g., *Styles Interactive*, 12 FCC Rcd. at ¶ 6.

Commission has suggested that later payments—like the installment payments at issue here—are less important as an indication of financial ability than earlier ones.⁷² A bright-line prophylactic rule may be appropriate when assessing the merits of auction winners: if they cannot obtain financing sufficient to make their down payment, they are unlikely to obtain financing sufficient to build out their systems. But such a rule is unnecessary at this stage: Airadigm no longer needs to demonstrate its ability to build out the system because it has already done so. The policy designed to ensure that licensees will be able to do what Airadigm has already done is therefore inapplicable.

The other concern, that leniency here might undermine the auction process by inducing others to act strategically, is likewise inapposite. As an initial matter, the Commission has made plain that it will not provide financing for auction winners in the “foreseeable future.”⁷³ Leniency with regard to installment payments thus could not induce strategic behavior in future auctions. Moreover, Airadigm’s situation is not enviable: When Airadigm emerges from bankruptcy, it will have wiped out all the existing equity and replaced virtually all of its senior management. Even if future auctions would *permit* strategic behavior, no prospective bidder would be tempted to emulate Airadigm.

Finally, the relief Airadigm requests here is relatively minor, and could not be thought by any future (or existing) licensee to be generally available. Airadigm does not seek to have all or part of its debt set aside—it will pay the full bid amount for the licenses. The relief

⁷² See, e.g. *Wireless Telecommunications Co.*, 12 FCC Rcd at ¶ 8 (“while we have consistently denied requests to waive these earlier payment deadlines, we believe that once the first down payment is made and a license is conditionally granted, some flexibility may be appropriate”).

⁷³ See Allocation of Spectrum Below 5 GHz Transferred from Government Use, *Fourth Report and Order*, 13 FCC Rcd 18929 at ¶ 25 (rel. Sept. 24, 1998); see also Amendment of Part 1 of the Commission’s Rules—Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 97-82 (rel. Dec. 31, 1997).

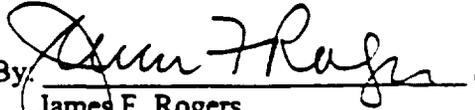
sought—allowing a licensee who has built out to continue serving 20,000 subscribers in rural and tribal lands, though it arguably missed payments due to an arguably mistaken interpretation of the bankruptcy code—could not have any impact on the integrity of the auction process.

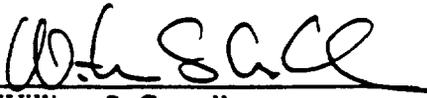
VI. CONCLUSION

This petition presents a truly unique situation. It presents the only C Block licensee that made payments as required by the rules, built out its system and began providing service to the public, but then encountered business difficulties that caused it to seek bankruptcy protection. Airadigm's mistake (to the extent it was mistaken) was simple inadvertence: reliance on a reasonable but arguably erroneous view of the law. But far more important than the nature of the mistake, it would be manifestly against the public interest to allow Airadigm's licenses to cancel. Service would be abruptly cut off to thousands of individuals and businesses, many in rural areas and tribal lands, while no countervailing interest (either in the integrity of the auction process or in the financial viability of licensees) would be advanced. This case is like no other, and it cries out for regulatory relief. The Commission should affirm its regulatory power by granting this petition.

Respectfully submitted,

AIRADIGM COMMUNICATIONS, INC.

By 
James F. Rogers


William S. Carnell

Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 637-2200

Attorneys for:
Airadigm Communications, Inc.

February 7, 2000

CERTIFICATE OF SERVICE

I, William S. Carnell, hereby certify that on this 7th day of February, 2000 that copies of the foregoing Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver were delivered by hand delivery to the following:

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(two copies)

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(two copies)

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(two copies)

Kathleen Hamm, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dianne Cornell, Associate Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Steven Weingarten, Chief
Wireless Telecommunications Bureau –
Commercial Wireless Division
Federal Communications Commission
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Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
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Commissioner Michael K. Powell
Federal Communications Commission
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Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
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James Schlichting, Deputy Chief
Wireless Telecommunications Bureau
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Sandra K. Danner, Chief Counsel
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445 12th Street, S.W.
Washington, D.C. 20554

Christopher J. Wright, General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Peter Miller, Esq.
United States Department of Justice
1100 L Street, N.W., Room 10104
Washington, DC 20005



William S. Carnell

LATHAM & WATKINS

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 SUITE 1300
 WASHINGTON, D.C. 20004-2505
 TELEPHONE (202) 637-2200
 FAX (202) 637-2201

FACSIMILE TRANSMISSION**DATE:** February 9, 2001**To:**

Name	Fax No.	Phone No.
Paul Cascio FCC	202-418-7540	

FROM: William Carnell**RE:** copy of DA 00-368

<input type="checkbox"/> ORIGINAL(S) WILL FOLLOW	NUMBER OF PAGES, INCLUDING COVER: 3
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LATHAM & WATKINS

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February 8, 2001

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TOKYO 104-0031, JAPAN
PHONE +81-3-5624-1900, FAX 5324-1900

FILE NO. 028737-0003

BY HAND DELIVERY

Federal Communications Commission
Wireless Bureau Applications
P.O. Box 358130
Pittsburgh, PA 15251-5130

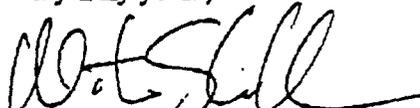
Re: DA 00-368 - Airadigm Communications, Inc. Petition for Reinstatement:
Submission of Filing Fee

Ladies and Gentlemen:

It has come to my attention that the Contingent Emergency Petition for Reinstatement or in the Alternative for Waiver filed by Airadigm Communications, Inc. on February 7, 2000 (DA 00-368) failed to include the appropriate filing fee. In accordance with the Commission's fee schedule in effect at the time of filing, 47 CFR § 1.1102-21 (1999), Airadigm hereby submits payment in the amount of \$135.00 as the filing fee for its petition for a rule waiver. Moreover, in accordance with section 1.1116(b) of the Commission's rules, 47 CFR § 1.1116(b) (1999), Airadigm hereby submits a penalty charge in the amount of \$33.75 (representing 25% of the \$135.00 originally due). The total amount of the enclosed check, including the filing fee and penalty, is \$168.75.

Please feel free to contact me should you have any questions about this matter. Thank you for your assistance.

Very truly yours,


William S. Carnell
of LATHAM & WATKINS

cc: Paul Cascio, Esq.

DC_DOCS359541.1 [W97]

INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX #
358130

SPECIAL USE
FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)
Airadigm Communications, Inc. (3) TOTAL AMOUNT PAID (U.S. Dollars and
\$168.75
(4) STREET ADDRESS LINE NO. 1
2301 Keble Drive
(5) STREET ADDRESS LINE NO. 2
(6) CITY Little Chute (7) STATE WI (8) ZIP CODE 54140
(9) DAYTIME TELEPHONE NUMBER (include area code) (920) 617-2111 (10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN) (12) PAYER (TIN)
391821734

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IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME
(14) STREET ADDRESS LINE NO. 1
(15) STREET ADDRESS LINE NO. 2
(16) CITY (17) STATE (18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code) (20) COUNTRY CODE (if not in U.S.A.)

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(21) APPLICANT (FRN) (22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID (24A) PAYMENT TYPE CODE P.D.W.M. (25A) QUANTITY
(26A) FEE DUE FOR (PTC) (27A) TOTAL FEE \$168.75 FCC USE ONLY
(28A) FCC CODE 1 (29A) FCC CODE 2
(23B) CALL SIGN/OTHER ID (24B) PAYMENT TYPE CODE (25B) QUANTITY
(26B) FEE DUE FOR (PTC) (27B) TOTAL FEE FCC USE ONLY
(28B) FCC CODE 1 (29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT
I, William S. Carnell, certify under penalty of perjury that the foregoing and supporting information is true and correct to
the best of my knowledge, information and belief. SIGNATURE [Signature] DATE 02/08/2001

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31) MASTERCARD/VISA ACCOUNT NUMBER: [] EXPIRATION []
 MASTERCARD
 VISA
I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.
SIGNATURE _____ DATE _____

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

August 28, 2001

OFFICE OF
MANAGING DIRECTOR

W. Kent Edwards, Director
Regulatory Finance
Concert Global Networks USA LLC
Dulles Corner
2355 Dulles Corner Blvd.
Herndon, Virginia 20171

RE: Request for Waiver of Late Charge
Penalty for FY 2000 Regulatory Fees
Fee Control No. 00000RROG-01-007

Dear Mr. Edwards:

This is in response to the request for waiver of the late charge penalty for late payment of Fiscal Year (FY) 2000 regulatory fees, filed on behalf of Concert Global Networks USA LLC.

You state that Concert recently became aware of a discrepancy concerning its international bearer circuit component of the FY 2000 Regulatory Fee and that Concert immediately investigated and took corrective action. Due to the increase in the corrected circuit numbers, you state that an update to Concert's original FY 2000 Regulatory Fee assessment was necessitated, and that Concert thus made an additional payment of \$557,109.00. Because Concert initially paid the fee in full and on time, and promptly remedied the situation when it realized that the data was deficient, you request a waiver of any possible penalty.

We have fully considered all of your contentions. The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. *See* 47 U.S.C. § 159(c)(1). Moreover, it is the obligation of the entity responsible for regulatory fee payment to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that this obligation was met. Therefore, your request is denied.

Payment of late charge penalties in the amount of \$139,277.25 for FY 2000 is now due. The late charge penalties must be filed together with a Form 159 (copy enclosed) within 30 days from the date of this letter.

If you have any questions concerning this letter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a large, stylized initial 'M'.

 Mark A. Reger
Chief Financial Officer

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE

Approved by OMB 3060-0589 Page No 1 of 1

(1) LOCKBOX #

358835

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SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

CONCERT GLOBAL NETWORKS USA LLC

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

11,103,834.00

(4) STREET ADDRESS LINE NO. 1

11921 FREEDOM DRIVE

(5) STREET ADDRESS LINE NO. 2

(6) CITY

RESTON

(7) STATE

VA

(8) ZIP CODE

201910

(9) DAYTIME TELEPHONE NUMBER (include area code)

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

01003-7758-48

(12) PAYER (TIN)

52-2143505

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(13) APPLICANT NAME

(14) STREET ADDRESS LINE NO. 1

(15) STREET ADDRESS LINE NO. 2

(16) CITY

(17) STATE

(18) ZIP CODE

(19) DAYTIME TELEPHONE NUMBER (include area code)

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

(22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

0073

28

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

FCC USE ONLY

\$4900.00

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

0076

156562

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

1095934.00

(28B) FCC CODE 1

(29B) FCC CODE 2

CONCERT MILQUETT ILLIENSIS COMPANY

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, W. Kent Edwards certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE W. Kent Edwards

DATE 20 Sept 2000

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION

MASTERCARD

VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE

DATE

Session, Johnathan (CRTRES)

From: Cox, Rebekah (CRTRES)
nt: Thursday, September 21, 2000 2:53 PM
: Session, Johnathan (CRTRES)
subject: FCC

Jonathan,

Here is a screen print from our banking system that shows the wire was sent. I assume that it was successful because it was not returned to us. You can call the FCC for confirmation on their end if you want. Also, the red, bolded number below is the Fed reference number that can be used to inform vendors that the payment has been made. This number is also useful if the vendor is trying to trace a wire that you made to them.

SAME DAY DR TRANSFER 1,100,834.00
GID:LCT02636316600
FED20000920C1B702CC000115
USER REF:C011000000011259
REF: C011000000011259
ORDER: CONCERT COMMUNICATIONS RESTON, VA
CR BK ID: 043000261
CR BK: MELLON BANK NA ATTN DUE FROM BANKS
MGMT UNIT 3 MELLON BANK CTR -ROOM 2523 PITT
SBURGH, PA. 15259-0003
BENEF: 9116106 FCC / ACV
DETAILS:'REGULATORYPAY' 1,100,834 CONCERT
T GLOBAL NETWORKS USA, LLC 703-707-4111
LOCKBOX 358835
INSTRUCT DATE:09/19/00 ADVICE TYPE:WIRE

anks

Rebekah

Rebekah Cox
Lead Analyst
Concert Treasury
+1 703 707 4309 phone
+1 703 707 4077 fax

29 June 2001

MEMO FOR FILE:

RE: FCC 159 - REGULATORY FEE - SUPPLEMENTAL PAYMENT

This memo is to document the requirement and approval of a supplemental payment by Concert to the US federal regulator (Federal Communications Commission - FCC) for the FCC fiscal year 2000 Regulatory Fee. The amount of the supplemental payment is \$557,109.00 USD.

Concert Global Networks USA L.L.C. filed its international bearer circuit component of the FY2000 FCC Regulatory Fees in September 2000 based on AT&T's 1999 43.82 (Circuit Status Report). Section 43.82 of the FCC rules states: "The number of 64Kbs bearer circuits [reported in the 43.82] should be consistent with data used to calculate regulatory fees." AT&T includes Concert circuits in its 43.82 report. A discrepancy surfaced when it was recognized that the leased circuit numbers reported by AT&T in the 43.82 (Circuit Status Report) did not match the 43.61 (International Traffic Data Report). Subsequent to investigation, AT&T filed a revised 43.82 report, which reflected 79,587 additional international bearer circuits for which Concert is liable to pay the FCC Regulatory Fee of \$7.00 each.

The FCC has instructed Concert to remit the supplemental payment accompanied by a completed FCC Form 159 showing only the additional quantity of circuits and fee being submitted. Subsequent to the necessary internal approval and concurrence, payment will be made via wire transfer simultaneous with transmission of the completed FCC Form 159.

W. Kent Edwards Date
Director, Regulatory Finance

APPROVED:

CONCURRED:

Walter G. DeSocio Date
General Counsel &
Senior Vice President, Regulatory Affairs

R. Wayne Jackson Date
Chief Financial Officer



29 June 2001

Concert Global Networks USA LLC

Dulles Corner
2355 Dulles Corner Blvd
Herndon, VA 20171
www.concert.com

Andrew S. Fishel
Managing Director
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Revision of Concert Global Networks USA L.L.C. FY2000 Regulatory Fees
(FRN 0003-7758-48; TIN 52-2143505)

Dear Mr. Fishel:

Concert Global Networks USA L.L.C. ("Concert"), a global venture of AT&T Corp. ("AT&T") and British Telecommunications ("BT"), filed its international bearer circuit component of the FY2000 Regulatory Fees in September 2000 based on AT&T's¹ 1999 43.82 (Circuit Status Report). (As stated in Section 43.82 of the Commission's rules, "The number of 64Kbs bearer circuits [reported in the 43.82] should be consistent with data used to calculate regulatory fees.") At that time, Concert, in good faith, calculated such fees on data believed to be full and accurate. When it came to our attention, however, that there was a discrepancy between leased circuit numbers reported in the 43.82 (Circuit Status Report) and the 43.61 (International Traffic Data Report), AT&T and Concert immediately investigated and took corrective action, resulting in the re-filing of AT&T's 1999 43.82. The newly reported circuit numbers increased and therefore necessitates an update to Concert's original FY2000 Regulatory Fee assessment.

To fulfill this obligation, Concert now submits a corrected count, and corresponding payment, for international bearer circuits for FY2000. Because we initially paid the fee in full and on time, and promptly remedied the situation when we realized the data was deficient, we respectfully request a waiver of any possible penalty.

Enclosed is a revised Form 159. The corresponding additional payment, calculated to be \$ 557,109.00, will be electronically wired to the Commission.

Respectfully submitted,

W. Kent Edwards
Director, Regulatory Finance

Attachment: FCC Form 159

¹ Except for the authorized 143 Cuba-7 cable circuits, AT&T's international January 5, 2000.

Handwritten calculations and signature:
139,277.25
4 | 557,109.00
4
15 557,109.00
12
37
36
118
3/22/29
BT

Bozza,Denise - HRBOU

From: Lyons, Mike (CRTRES) [Mike.Lyons@concert.com]
Sent: Monday, June 18, 2001 4:56 PM
To: 'cpride@fcc.gov'
Cc: Edwards, Kent (CRTRES); 'mreger@fcc.gov'
Subject: Instructions for FY 2000 Revision

Claudette:

There was a discrepancy between leased circuit numbers AT&T reported in its 1999 43.82 (Circuit Status Report) and its 1999 43.61 (International Traffic Data Report). After being notified of a potential problem, AT&T and Concert (AT&T's global venture with British Telecommunications) immediately investigated and took corrective action, which resulted in the re-filing of AT&T's 1999 43.82. The newly reported circuit numbers increased and therefore necessitates an update to Concert's original FY2000 regulatory fee assessment. Jacqueline Ponti suggested contacting you to ascertain what process needs to be followed to recalculate the international bearer circuit component of the FY2000 regulatory fee assessment. Please advise what form we must complete and to whom/what lockbox this form should be sent. Additionally, we will accompany the form with a letter requesting a waiver from any potential penalties, as we calculated the original fees based on information believed to be full and accurate at the time. If the waiver letter should be addressed to someone other than whom you state for the form, please advise accordingly.

Thank you for your assistance.

Sincerely,

Mike Lyons

Michael W.Lyons
Regulatory Finance
01 703 / 561-8931

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 28 2001

OFFICE OF
MANAGING DIRECTOR

Leonard S. Joyce, Esquire
Law Offices of Leonard S. Joyce
5335 Wisconsin Avenue, N.W.
Suite 400
Washington, D.C. 20015

RE: Request for Waiver of Late Charge
Penalty for FY 2000 Regulatory Fees
Fee Control No. 00000RROG-01-006

Dear Mr. Joyce:

This is in response to the request for waiver of the late charge penalty for late payment of Fiscal Year (FY) 2000 regulatory fees, filed on behalf of Gateway Radio Works, Inc., licensee of WMST-AM, Mount Sterling, Kentucky.

You state that prior to the receipt of the billing notice dated May 14, 2001 (2000-9MB-0895) Gateway assumed that the FY 2000 regulatory fee for WMST had been paid by the former licensee on a timely basis. You assert that the regulatory fee was assessed based on licenses held as of October 1, 1999 and that Gateway did not acquire the WMST license until March 3, 2000. Based on these circumstances, and in light of Gateway's honest, unintentional mistake, you request waiver of the 25% penalty and late fee.

We have fully considered all of your contentions. The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. See 47 U.S.C. § 159(c)(1). Moreover, it is the obligation of the entity responsible for regulatory fee payment to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. In this regard, the Commission stated that, when a license is transferred or assigned after October 1, 1999, the licensee on the date that the payment is due must pay the fee. See Assessment and Collection of Regulatory Fees for Fiscal Year 2000, 15 FCC Rcd 14478, 14496 ¶ 44 (2000). Your request does not indicate or substantiate that the obligation to pay the fee on a timely basis was met. Therefore, your request is denied.

Payment of late charge penalties in the amount of \$106.25 for FY 2000 is now due. The late charge penalties must be filed together with a Form 159 (copy enclosed) within 30 days from the date of this letter.

Leonard S. Joyce

2.

If you have any questions concerning this letter, please call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a large, stylized initial 'M'.

Mark A. Reger
Chief Financial Officer

Enclosure

LAW OFFICES OF
LEONARD S. JOYCE

5335 WISCONSIN AVENUE, N.W., SUITE 400
WASHINGTON, D.C. 20015

TELEPHONE
(202) 364-6970

FACSIMILE
(202) 686-8282

June 5, 2001

Federal Communications Commission
Revenue and Receivables Operations Group
Room 1A821
445 12th Street, S.W.
Washington, D.C. 20554

Attention: Susan Donahue, Chief
Revenue and Receivables
Operations Group

**Re: Station WMST (AM)
Mount Sterling, Kentucky**

**2000 Regulatory Fees
Request for Waiver of Penalty
For Late Filing**

Dear Ms. Donahue:

This letter and the attachments hereto, are submitted by undersigned counsel for Gateway Radio Works, Inc. (hereinafter "Gateway"), in response to your letter of May 14, 2001 (re: 2000-9MB-0895) addressed to Gateway.

In your May 14, 2001 letter (a copy of which is attached hereto as Appendix A), you note that the FY 2000 Mass Media Bureau records disclose that the FY 2000 regulatory fee for Station WMST (AM) Mount Sterling, Kentucky has not been paid.

Prior to receipt of your May 14, 2001 letter, Gateway assumed that the FY 2000 Regulatory Fee for WMST had been paid by the former licensee of Station WMST, Rodney A. Burbridge, for in October, 1999 (and before) he, not Gateway, was the licensee of Station WMST, and said fee was assessed based on licenses held as of October 1, 1999. Gateway did not acquire the WMST licensee until March 3, 2000, pursuant to the prior approval of the FCC under application BAL-20000112AAF, granted February 28, 2000.

Federal Communications Commission
Revenue and Receivables Operations Group
June 5, 2001
Page 2

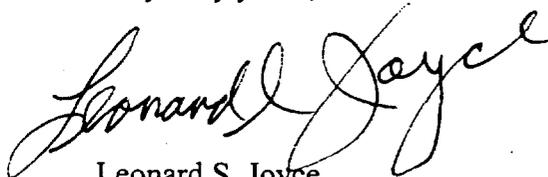
After receipt of your May 14, 2001 letter, Gateway investigated and confirmed that the former licensee, in fact, did not pay the WMST FY 2000 Regulatory Fee.

Gateway realizes that this fee must be paid, and, therefore, Gateway has mailed, this date, completed FCC Form 159 and Gateway's \$425.00 check to the FCC, at Box 358835, Pittsburgh, Pennsylvania 15251-5835. Attached hereto, as Appendices B and C copies of that Form 159 and \$425.00 check. While Gateway will seek reimbursement from the former licensee, Gateway's payment is unconditional and not contingent upon reimbursement.

However, Gateway hereby request's waiver of payment of the 25% (\$1.06.25) penalty for late payment, for (1) Gateway had thought that the former licensee had made timely payment, and (2) Gateway would have made timely payment had it known that the former licensee did not make timely payment. Late payment resulted from an honest, unintentional mistake.

Should you have any questions concerning this letter and/or the waiver request, please communicate directly with the undersigned.

Very truly yours,



Leonard S. Joyce

LSJ/clp

Enclosures

APPENDIX A

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

MAR 14 2001

OFFICE OF
MANAGING DIRECTOR

GATEWAY RADIO WORKS, INC.
P.O. BOX 1010
OWINGSVILLE, KE 40360

Re: 2000-9MB-0895

Dear Licensee:

This letter is in reference to the annual 2000 regulatory fee(s), which were due to the Federal Communications Commission (Commission) by no later than September 22, 2000. This is a mandatory fee established by Congress in accordance with The Omnibus Budget Reconciliation Act of 1993. The fees are used to offset costs associated with the Commission's enforcement, public service, international and policy and rulemaking activities.

The Commission is currently verifying its FY 2000 Mass Media Bureau regulatory fees collection to identify those regulatees who have not paid. Our research indicates that we have no record of your 2000 regulatory fee payment for the following call sign:

WMST-AM

The amount now due is \$425.00 plus a 25% penalty of \$106.25 for late payment of the fee(s). The total amount now due is \$531.25. Payment in full should be remitted with the enclosed Form 159 to: **Federal Communications Commission, P.O. Box 358835, Pittsburgh, PA 15251-5835** within thirty (30) days of the date of this letter. You should submit all payments that may be due including the 25% penalty for each call sign. To obtain a copy of the Public Notice for further instructions, go www.fcc.gov and click on "Fees." Then click on Regulatory Fees and locate your particular service.

If payment has been made, please provide a complete copy of your submission including proof of payment. If you believe you are not obligated to pay under the Commission's rules, please submit complete documentation supporting your position within thirty (30) days of the date of this letter. These documents should be sent to: **Federal Communications Commission, Revenue & Receivables Operations Group, Room 1A821, 445 12th Street, SW, Washington, DC 20554.**

You are cautioned that failure to respond and/or pay the penalty will subject you to further sanctions as defined by CFR Section 1.1164 of our Rules. These sanctions include subjecting the delinquent payer's pending applications to dismissal, and may require a delinquent payer to show cause why its existing instrument of authorization should not be revoked. Further sanctions include interest charges, and the full cost of collection to the Federal Government pursuant to Section 3720A of the Internal Revenue Code and the provisions of the Debt Collection Act.

If you need further assistance, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Susan Donahue, Chief
Revenue & Receivables Operations Group

Enclosure

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING	FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE	Approved by OMB 3060-0589 Page No <u>1</u> of <u>1</u>
(1) LOCKBOX # 358835	SPECIAL USE FCC USE ONLY	

SECTION A - PAYER INFORMATION		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) G A T E W A Y R A D I O W O R K S I N C	(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) 4 2 5	
(4) STREET ADDRESS LINE NO. 1 P O B O X 1 0 1 0		
(5) STREET ADDRESS LINE NO. 2		
(6) CITY O W I N G S V I L L E	(7) STATE K Y	(8) ZIP CODE 4 0 3 6 0
(9) DAYTIME TELEPHONE NUMBER (include area code) 6 0 6 6 7 4 2 2 6 6	(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(11) PAYER (FRN) 0 0 0 3 7 8 8 9 2 4	(12) PAYER (TIN) 6 1 1 0 0 9 8 8 1	

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME S A M E A S P A Y E R		
(14) STREET ADDRESS LINE NO. 1		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY	(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)	(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN)	(22) APPLICANT (TIN)	

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID W M S T	(24A) PAYMENT TYPE CODE 0 0 3 6	(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE 4 2 5	FCC USE ONLY
(28A) FCC CODE 1 4 6 7 4 9	(29A) FCC CODE 2 K Y M O U N T S T E R L I N G	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	

SECTION D - CERTIFICATION	
(30) CERTIFICATION STATEMENT I, <u>LEONARD S. JOYCE, Counsel for</u> Payer/Applicant, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.	SIGNATURE <u>Leonard S. Joyce</u> DATE <u>6/5/2001</u>

SECTION E - CREDIT CARD PAYMENT INFORMATION		
(31)	MASTERCARD/VISA ACCOUNT NUMBER:	EXPIRATION
<input type="checkbox"/> MASTERCARD	DOES NOT APPLY	
<input type="checkbox"/> VISA	I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.	
SIGNATURE	DOES NOT APPLY	DATE